

APPELLATE COURT
STATE OF CONNECTICUT

NO. A.C. 38043

STACY B.,

PLAINTIFF-APPELLEE,

V.

ROBERT S.,

DEFENDANT-APPELLANT.

BRIEF OF THE PLAINTIFF-APPELLEE

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PLAINTIFF-APPELLEE
STACY B.

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ISSUES PRESENTED

- I. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THAT ROBERT S. HAD ENGAGED IN CONDUCT AMOUNTING TO STALKING IN THE SECOND DEGREE.**
- II. WHETHER DEFENDANT'S CONDUCT WAS PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION NOR BY ARTICLE FIRST, SECTION 4, OF THE CONNECTICUT CONSTITUTION.**

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PRELIMINARY STATEMENT

Connecticut General Statutes §46b-16(a), formerly known as Connecticut Public Act 14-217, states that:

- (a) Any person who has been the victim of sexual abuse, sexual assault or stalking, as described in sections 53a-181c, 53a-181d and 53a-181e of the general statutes, may make an application to the Superior Court for relief under this section, provided such person has not obtained any other court order of protection arising out of such abuse, assault or stalking and does not qualify to seek relief under section 46b-15 of the general statutes."

Conn. Gen. Stat. §53a-181d(b) provides that "a person is guilty of stalking in the second degree when:

- (1) Such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's physical safety or the physical safety of a third person; or
- (2) Such person intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where (A) such conduct consists of the actor telephoning to, appearing at or initiating communication or contact at such other person's place of employment or business, provided the actor was previously and clearly informed to cease such conduct, and (B) such conduct does not consist of constitutionally protected activity.

In this case, the defendant, Robert S., over a period of approximately three years, contacted clients and acquaintances of the plaintiff, Stacy B. The defendant's communications were comprised of slanderous statements about the plaintiff involving

his character, background, and professionalism. Robert S. believes he has the right to contact anyone to spread his message. However, his message, understandably so, places the plaintiff, Stacy B., in fear of his employment, business, and career. Therefore, the defendant's offending conduct, meeting the four corners of the crime stalking in the second degree, affords him the ability to seek relief under C.G.S. §46b-16(a).

In Connecticut:

The scope of our appellate review depends upon the proper characterization of the rulings made by the trial court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. When, however, the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record.

Town of Stratford v. Jacobelli, 317 Conn. 863, (2015). Furthermore, "[i]t is well established that a claim must be distinctly raised at trial to be preserved for appeal."

Murphy v. EAPWJP, LLC, 306 Conn. 391, 399 (2012). Following the hearing, the Honorable Judge Trial Referee Wilson Trombley determined that the plaintiff met his burden and ordered protective orders accordingly. As will be shown, Judge Trombley was correct in his finding of facts, application of law, and ultimately his orders of protection.

STATEMENT OF FACTS AND DESCRIPTION OF PROCEEDINGS

The plaintiff is a resident of Connecticut and is professionally engaged in the practice of forensic psychology.¹ The defendant is a resident of the state of Connecticut and a practicing attorney. The parties, who are former friends, originally came to know each other when the plaintiff worked as an expert forensic psychologist in several of the defendant's cases. Over time the parties became close friends, and that lasted for a few years.² Eventually, the defendant attorney began showing signs of paranoia and delusions which resulted in the plaintiff backing away from the friendship.³ This separation resulted in the defendant sending strange emails and voice messages to the plaintiff and others on numerous occasions.⁴

In 2012, the plaintiff filed his first complaint with the Norwalk Police Department, resulting from the defendant's unwanted contacts. On July 30, 2012 the Norwalk Police Department issued its first directive to the defendant to cease all contact with the plaintiff and any parties that know the plaintiff. Then, on January 14, 2015, Officer Thomas Sullivan of the Norwalk Police Department issued another directive to the defendant to cease communications with anyone connected to the plaintiff.⁵ On April 11, 2015, the

¹ *Memorandum of Decision*, Trombley, J.T.R., pp. 4, May 27, 2015

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

defendant was once again directed, this time by State Trooper Jonathan Conlon, to stop contacting parties connected with the plaintiff.⁶ Nonetheless, the defendant ignored these directives by law enforcement and continued his conduct.⁷

“Defendant’s...conduct consisted of disclosure via e-mails to the Connecticut Board of Firearms Permit Examiners, the State Board of Health and the American Psychological Association, via Internet blogs and postings of certain events in the plaintiff’s past that, according to the defendant, prove that the plaintiff was unstable, deviant, and ‘a very sick man.’”⁸ The defendant published, to various third parties connected to the plaintiff’s employment, information about alleged court proceedings involving the plaintiff. The defendant also blogged, on the internet, that the plaintiff had a criminal record in the State of Florida.⁹

Robert S. sought out past, present, and even potential clients of the plaintiff, claiming that Stacy B. was a “dangerous individual” and “psychopath”.¹⁰ The defendant also specifically referred officials from a company that the plaintiff was working for, to a blog that he authored, titled, “The Truth about S. David B[redacted].”¹¹ This blog contained detailed information about the plaintiff’s alleged prior court proceedings. The

⁶ Id.

⁷ Id.

⁸ *Memorandum of Decision*, Trombley, J.T.R., pp. 5, May 27, 2015

⁹ Id.

¹⁰ Id. at 6

¹¹ Id. at 7

defendant even went so far as to contact the school that the plaintiff's child attends (and for which he serves on its safety board), to inform school officials that the plaintiff is a "danger to children."¹² At hearing, Robert S. refused to testify on his own behalf and presented no evidence to prove his assertions, in fact leaving the court house mid-trial at the advice of his counsel.¹³ Ultimately faced with a vast amount of evidence in favor of the plaintiff's application and none supportive of the defendant, Judge Trombley made his orders of protection.¹⁴

ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT ROBERT S. HAD ENGAGED IN CONDUCT AMOUNTING TO STALKING IN THE SECOND DEGREE.

We begin this analysis with the actual text of Conn. Gen. Stat. § 53a – 181d. Conn. Gen. Stat. § 53a – 181d (b) provides that a person is guilty of stalking in the second degree when:

- (1) Such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's physical safety or the physical safety of a third person; or
- (2) Such person intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where (A) such

¹² Id.

¹³ *Civil Protective Order Hearing Transcript*, Appendix A31, May 7, 2015

¹⁴ *Memorandum of Decision*, Trombley, J.T.R., p. 2, May 27, 2015

conduct consists of the actor telephoning to, appearing at or initiating communication or contact at such other person's place of employment or business, provided the actor was previously and clearly informed to cease such conduct, and (B) such conduct does not consist of constitutionally protected activity.

Here, the plain language of the statute makes it clear that a party may obtain relief if the violator engaged in a course of conduct knowingly and for no legitimate purpose; that the conduct was directed at a specific person; that the conduct would cause a reasonable person to fear that such person's employment, business, or career is threatened; that the conduct consisted of the actor telephoning, appearing, or initiating communications with the other person's place of employment or business after having been informed to cease such conduct; and that the conduct was not a constitutionally protected activity.

The facts of the present case clearly satisfy the elements provided by the statute and confirm the trial court's decision in the plaintiff's favor. The first element of this section states "such person intentionally and for no legitimate purpose...."¹⁵ According to Conn. Gen. Stat. §53a-3, "[a] person acts 'intentionally' with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct." Here, the defendant consciously made phone calls, placed emails, and blogged about the plaintiff, thus he acted intentionally. Additionally, this element requires that the defendant acted with no legitimate purpose. The defendant

¹⁵ Conn. Gen. Stat. §53a-181d(b)(2)

will argue that his purpose was to inform on an issue that is of public concern but the defendant failed to offer any information or to even testify on his own behalf at the trial level in an effort to support this argument.¹⁶ His argument is groundless.

The next set of elements require that the actor “engages in a course of conduct directed at a specific person.” Conn. Gen. Stat. § 53a-181d(a) defines “course of conduct” as “two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means (1) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates with or sends unwanted gifts to, a person....” Here, the defendant’s course of conduct was various e-mails, voice messages, blog posts, and calls to third parties connected to the plaintiff.¹⁷ Here, the defendant transmitted numerous emails, as well as, created internet posts about the plaintiff.

Conn. Gen. Stat. §53a-181d(b)(2) also requires that the conduct by the actor “would cause a reasonable person to fear that such person’s employment, business, or career is threatened, where such conduct consists of the actor telephoning to...or initiating communication or contact at such other person’s place of employment or business....” Here, the defendant on numerous occasions either phoned or reached out to the plaintiffs past, present, and potential clients.¹⁸ Any reasonable person would be

¹⁶ *Memorandum of Decision*, Trombley J.T.R., pp. 2, May 27, 2015

¹⁷ *Memorandum of Decision*, Trombley J.T.R., pp. 6, May 27, 2015

¹⁸ *Id.*

beside themselves with worry and fear about their employment if they had someone consistently contacting people associated with their course of work and that someone was stating that such other person was “unstable, deviant, and ‘a very sick man’.”¹⁹

Conn. Gen. Stat. §53a-181d also requires that the “actor was previously and clearly informed to cease such conduct...” On at least three separate occasions the defendant was clearly informed by law enforcement to cease his offensive conduct. The first warning was on July, 30, 2012 by the Norwalk Police Department.²⁰ The defendant was warned to stop all contact with the plaintiff and to “stop disseminating negative information, electronically and otherwise, about B[redacted].”²¹ The second warning was on January 14, 2015 by Norwalk Police Officer Thomas and the third warning was on April 11, 2015 by State Trooper Conlon.²² After both warnings, the defendant continued to contact parties that were connected with the plaintiff’s employment, business and career.²³

Therefore, the trial court correctly determined that the defendant had engaged in conduct amounting to stalking in the second degree and issued its order of protection.

¹⁹ *Id.*

²⁰ Norwalk Police Department, Police Report, Appendix A10, July 31, 2012

²¹ *Id.*

²² *Memorandum of Decision*, Trombley J.T.R., p. 4, May 27, 2015

²³ *Id.*

II. DEFENDANT'S CONDUCT WAS NOT PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION NOR BY ARTICLE FIRST, SECTION 4, OF THE CONNECTICUT CONSTITUTION.

The defendant argues that a citizen's right to freedom of speech under the Connecticut Constitution is afforded greater protections than a citizen's free speech rights under the United States Constitution. The defendant's expansive view on this is wrong and completely ignores the limiting clause of the Connecticut Constitution which states: "[e]very citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty."²⁴ Clearly, one's rights to speak on all subjects is not without limitation, and therefore, "[i]t is upon the latter part of this section that most of the rules relating to libel arise...." Sandora v. Times Co., 113 Conn. 574 A. 819, 821 (1931).

Here, the defendant would have this court, remove the shackles that limit his being able to communicate his reprehensible claims about the plaintiff. However, permitting the defendant's improper conduct would violate public policy and is defamatory at best. Public policy recognizes that individuals have the right to enjoy their reputation unimpaired by defamatory attacks. Gallo v. Barile, 284 Conn. 459, 470 (2007).

As a rule, "Defamation is made up of slander and libel. Slander is spoken defamation and libel is written defamation." Mercer v. Cosley, 110 Conn. App. 283, 955 A.2d 550 (2008). "To establish a prima facie case of defamation, plaintiff must

²⁴ Conn. Const. art. I, §4

demonstrate that: (1) defendant published a defamatory statement, (2) the defamatory statement identified plaintiff to a third person, (3) the defamatory statement was published to a third person, and (4) plaintiff's reputation suffered injury as a result of the statement.” Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 969 A.2d 736 (2009).

In this case, the defendant has published numerous defamatory statements about the plaintiff. The defendant has directly and indirectly contacted numerous past and present employers of the plaintiff, referring to the plaintiff as “unstable, deviant, and ‘a very sick man’.”²⁵ In addition to those instances, the defendant also created a blog about the plaintiff on which the defendant claimed to disclose information about the plaintiff's past and questioning whether the plaintiff has a criminal history in Florida.²⁶

The second part of establishing a prima facie case of defamation requires that the defamatory statements identified the plaintiff to a third person. Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 969 A.2d 736 (2009). Here, the title of the defendant's blog about the plaintiff was titled “The Truth about S. David B[redacted].”²⁷ On this blog, similar to the above, the defendant claimed to disclose factual, yet harmful, information about the plaintiff's past, clearly identifying the plaintiff to any third parties who read the

²⁵ *Memorandum of Decision*, Trombley J.T.R., p.6, May 27, 2015

²⁶ *Id.* at 6 - 7

²⁷ *Memorandum of Decision*, Trombley J.T.R., p. 7, May 27, 2015

blog. Additionally, the defendant also specifically directed a (then) current employer of the Stacy B.'s to view the blog.²⁸

The third part of establishing a prima facie case of defamation requires that the defamatory statement be published to a third party. Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 969 A.2d 736 (2009). As detailed above the defendant directed a (then) current employer of the plaintiff to view the blog. The defendant also contacted various employment and business connections of the plaintiff, through which, the defendant called into question the plaintiff's character and referred to him as unstable, deviant, sick, psychopathic, and as being a dangerous individual.²⁹ It is clear that the defendant published his harmful statements to third parties.

The final part of establishing a prima facie case of defamation requires that the plaintiff's reputation suffered an injury as a result of the statement. Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 969 A.2d 736 (2009). "This court has delineated specific categories of speech deemed actionable per se where 'the defamatory meaning of [the speech] is apparent on the face of the statement....'" DeVito v. Schwartz, 66 Conn. App. 228, 234, 784 A.2d 376, 381 (2001). "When the defamatory words are actionable per se, the law conclusively presumes the existence of injury to the plaintiff's reputation." Id., at 234-35. Here, the defendant's statements about the plaintiff's character, mental

²⁸ Id.

²⁹ *Memorandum of Decision*, Trombley J.T.R., p. 6 - 7, May 27, 2015

stability, and professional suitability are clearly defamatory on their face. Additionally, Robert S.'s conduct is even worse when considered in the context that the plaintiff's profession is in the field of psychology, where mental stability and character play a large role.

The defendant's conduct cannot at the same time violate public policy and be constitutionally protected, as the only time that defamatory attacks are protected is during judicial proceedings. Simms v. Seaman, 308 Conn. 523, 535 (2013). In this case, since the defendant's conduct did not occur in relation to judicial proceedings and clearly amounts to defamation, it is not protected by either the United States Constitution or the Connecticut Constitution.

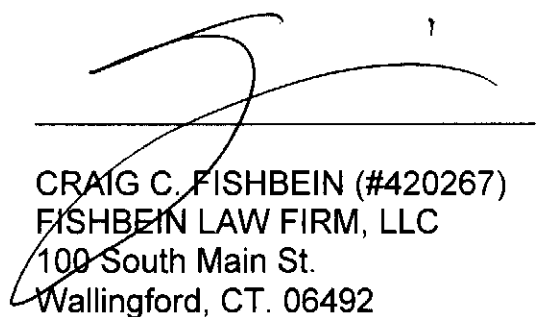
This is not the only time the defendant has displayed such behavior and as such he should be aware of the wrongness of his conduct. In 2013, the defendant was put on a 120 day suspension from practicing law after he disclosed to the media untruthful statements about a judge in the city of Derby. The defendant appealed his sanctions, claiming that his statements are constitutionally protected. The Appellate Court ultimately affirmed the Superior Court's sanctions after deciding that the defendant's arguments did not hold any ground. Disciplinary Counsel v. S[redacted], 160 Conn. App. 92 (2015)

For these reasons, the defendant's conduct was not protected by either the United States Constitution nor by the Connecticut Constitution and is not afforded any protections.

CONCLUSION

The trial court correctly found the defendant's conduct amounted to stalking in the second degree and the defendant's conduct was not protected by either the United States Constitution or the Connecticut Constitution. For these reasons the trial court's judgment should be affirmed.

Respectfully submitted:



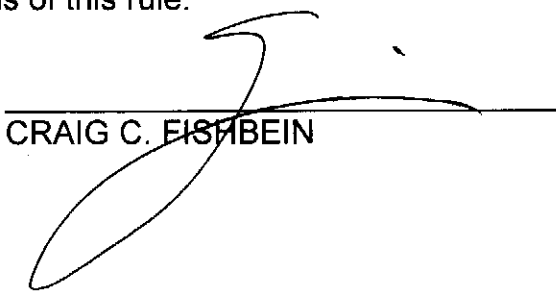
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CERTIFICATION OF SECTION 67-2 COMPLIANCE

The undersigned attorney hereby certifies pursuant to Connecticut Rules of Appellate Procedure §67-2 that:

- (1) The electronically submitted brief and appendix was delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address was provided, to wit: jwr@johnrwilliams.com; and
- (2) The electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and
- (3) A copy of the brief and appendix was sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7, to wit: John R. Williams, Esq., 51 Elm St., New Haven, CT 06510 and Hon. Wilson J. Trombley, Judge Trial Referee, 400 Grand St., Waterbury, CT 06702; and
- (4) The brief and appendix filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and
- (5) The brief complies with all provisions of this rule.


CRAIG C. FISHBEIN